United Nations A/HRC/WGAD/2018/12

General Assembly

Distr.: General
20 July 2018

Original: English

Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, 17–26 April 2018

Opinion No. 12/2018 concerning Rashad Ramazanov (Azerbaijan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 30 August 2017 the Working Group transmitted to the Government of Azerbaijan a communication concerning Rashad Ramazanov. The Government replied to the communication on 30 October 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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Submissions

Communication from the source

4. Rashad Ramazanov, born in 1982, is of Azerbaijani origin and usually resides with his family in Baku.

5. The source reports that, in 2004, Mr. Ramazanov graduated from Baku State University with a Masters' Degree in ecology before going on to study for a PhD in philosophy, sociology and law at the Institute of National Sciences Academy of Azerbaijan.

6. Mr. Ramazanov is reportedly the author of many articles and seven books, including *One Hundred Muslims*, published in 2005, in which he criticized the former President of Azerbaijan, Heydar Aliyev. Mr. Ramazanov's academic articles have been published by the National Sciences Academy of Azerbaijan and other institutes.

7. According to the source, Mr. Ramazanov has also been an active and outspoken political commentator on social media and has published articles critical of the Government on his Facebook page, under the pen name Rashad Heqiqet Ağgaddin (see http://on.fb.me/12G0WJE). He has reportedly received many warnings and threats from the Azerbaijani authorities for his critical writing online, and has received death threats from radical Islamist extremists in Baku for his liberal views.

8. As a result of such threats, he reportedly fled to Turkey in 2009 with his wife and 1-year-old daughter. They returned to Azerbaijan a year later, but the threats resumed and he lived apart from his family until 2012, for their protection. At the time of his arrest in May 2013, his wife was heavily pregnant with their second child.

9. According to the source, on 9 May 2013, at around 1 p.m., Mr. Ramazanov was arrested in Baku near the 20 January metro station by plainclothes officers from the Organized Crime Department of the Ministry of Internal Affairs of Azerbaijan. Mr. Ramazanov had been on his way back from a publishing house. The officers reportedly did not show any arrest warrant or other decision by a public authority, nor did they notify Mr. Ramazanov of the reasons for his arrest, thereby acting in violation of article 19.4.1 of the Code of Criminal Procedure of Azerbaijan[1] and article 9 (2) of the International Covenant on Civil and Political Rights.

10. The source reports that the officers took Mr. Ramazanov to the Organized Crime Department where they searched him and subsequently claimed to have discovered 9.057 grams of heroin in his trouser pocket. Mr. Ramazanov denied the charges and insisted that the drugs had been planted on him during his arrest. He added that while in detention, officers forced him to touch the drugs.

11. The source also reports that on 10 May 2013, the Baku City Narimanov District Court remanded Mr. Ramazanov in custody for three months under article 234.4.3 of the Criminal Code (manufacturing, purchase, storage, transfer, transportation or sale of chemical components with a view to the illegal manufacturing and processing of narcotics or psychotropic substances, in a large quantity). According to the source, crimes committed under this article of the Criminal Code carry a penalty of up to 12 years in prison.

12. The source further reports that Mr. Ramazanov's family and lawyer received no information about his whereabouts for four days. His lawyer was only allowed to meet him in police custody on 17 May 2013, despite repeated requests. Mr. Ramazanov reportedly told his lawyer, in the presence of an investigator, that he had been beaten by police officers in the police car on the day of his arrest, and again upon interrogation during the first three days of his detention. The lawyer had also stated that had seen injuries on Mr. Ramazanov's face, neck and hands.

[1] According to article 19.4.1 of the Code of Criminal Procedure, the prosecuting authority is to secure the rights of the suspect or accused to have the assistance of a defence counsel from the moment of detention or arrest, as the suspect before the first interrogation or as the accused as soon as charges have been laid.

13. According to the source, the Azerbaijani authorities are not known to have carried out any investigation into Mr. Ramazanov's allegations of torture and other ill-treatment. Requests for Mr. Ramazanov to undergo medical examination at the time were reportedly also ignored.

14. The source refers to article 157.3 of the Code of Criminal Procedure of Azerbaijan, pursuant to which a person arrested on the grounds of a court decision may not be held in a temporary detention facility for longer than 24 hours, and will be transferred, within that period, to the investigating authority's remand facility (this period is not to include the time spent transporting the arrested person to the remand facility). Mr. Ramazanov, however, was inexplicably kept in police custody for 10 days until 20 May 2013, when he was transferred to the Kurdakhani pretrial detention centre (Baku prison No. 1). He is currently detained in Baku prison No. 2.

15. According to the source, Mr. Ramazanov's case was referred to the Baku serious crimes court on 7 August 2013. The only witnesses in his trial were reportedly the officials who detained him. The source reports that on 13 November 2013, the Baku serious crimes court sentenced Mr. Ramazanov to nine years in prison. His sentence was upheld by the Baku Court of Appeal on 16 January 2014 and by the Supreme Court of Azerbaijan on 14 May 2014.

16. The source refers to the 2016 concluding observations of the Committee against Torture, in which the Committee expressed concern about numerous and persistent allegations that torture and ill-treatment were routinely used by law enforcement and investigative officials in Azerbaijan, or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings. The Committee was particularly concerned that not a single individual had been prosecuted between 2010 and 2015, despite hundreds of complaints having been filed, and called on the Azerbaijani authorities to apply a zero tolerance approach to the continuing problem of torture and to the practice of impunity. It further called on the authorities to guarantee detainees prompt and unimpeded access to an independent lawyer of their choice[2] from the moment of arrest.

17. According to the source, there is allegedly a clear pattern of the Azerbaijani authorities using charges of drugs or firearms possession, "hooliganism" or tax evasion to arrest and imprison writers and journalists critical of the authorities. In this regard, the source refers to the 2016 concluding observations of the Human Rights Committee, in which the Committee expressed concern about consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated, trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office and incitement to violence or hatred. The Committee called on the Azerbaijani authorities to take immediate steps to end any repression against these categories of persons and to take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice.[3]

18. Noting that Mr. Ramazanov is well-known for his anti-government posts online, the source believes that the charges against him are politically motivated and that he is imprisoned solely for having exercised his right to freedom of expression. The source thus calls for his immediate and unconditional release and for his conviction to be quashed.

19. The source also alleges that Mr. Ramazanov was effectively subjected to an enforced disappearance for four days from the moment of his arrest. In this connection, the source notes that the Working Group on Enforced or Involuntary Disappearances has repeatedly clarified that "there is no time limit, no matter how short, for an enforced disappearance to occur."[4] The source notes that as a party to the International Convention

[2] See CAT/C/AZE/CO/4 paras. 8, 9 and 13.

[3] See CCPR/C/AZE/CO/4, paras. 36 (a) and 37.

[4] Office of the United Nations High Commissioner for Human Rights, "Enforced disappearances: high time to put the issue at the top of UN Member States' agendas", press release, 24 October 2016.

for the Protection of All Persons from Enforced Disappearance, Azerbaijan is obliged to refrain from acts that would defeat or undermine the objective and purpose of the Convention.

20. The source further reports that Mr. Ramazanov was held in solitary confinement for 15 days, from 23 January 2017. His family and lawyer tried to visit him but were denied permission. The reason for this punishment remains unknown. On 7 February 2017, Mr. Ramazanov's family was informed that he had been released from solitary confinement and was subsequently allowed to visit him.

21. According to the source, Mr. Ramazanov is not receiving the medical treatment that he requires. He suffers from a number of health problems as a result of his imprisonment, the most serious being tuberculosis, which he contracted when he was reportedly arbitrarily detained for several months in 2005 by the Ministry of Internal Affairs following his criticism of Heydar Aliyev, the former President of Azerbaijan, in his book *One Hundred Muslims*.

22. In this connection, the source notes that in 2016, the Human Rights Committee expressed concern regarding the treatment of prisoners and called on the Azerbaijani authorities to improve conditions of detention in accordance with the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[5]

Response from the Government

23. Rashad Aghaddin oghlu Ramazanov, born in Masalli district in 1982, is a national of Azerbaijan.

24. He was detained by police officers on 9 May 2013, when a large amount of heroin (9.057 grams) was found on his person. On 10 May 2013, Mr. Ramazanov was found criminally liable.[6]

25. The preliminary investigation into the criminal case was completed on 30 July 2013, and the case was transmitted to the Baku serious crimes court for examination.

26. On 13 November 2013, Mr. Ramazanov was found guilty by the Baku serious crimes court, under article 234.4.3 of the Criminal Code (illegal production, preparation, obtaining, keeping, transporting, sending or selling of narcotics, psychotropic substances or its precursors in a large amount) , and sentenced to nine years' imprisonment (from 9 May 2013 to 9 May 2022).

27. During the court hearing, in addition to the police officers who had detained Mr. Ramazanov, two other individuals were interrogated as witnesses.

28. The Government informs the Working Group that the allegations of beating, inhuman treatment and other illegal actions by police officers against Mr. Ramazanov have been investigated thoroughly. A forensic medical examination was ordered, and the opinion of the Association of Forensic Medical Expertise and Pathological Anatomy of the Ministry of Health, dated 24 June 2013, was that no injury or traces thereof had been found on Mr. Ramazanov's body. Furthermore, Mr. Ramazanov, like all other prisoners, was thoroughly examined on admission to the Baku pretrial detention facility and no injuries were found. The application to initiate a criminal case in that regard was therefore rejected on 5 July 2013.

29. Mr. Ramazanov's appeal was rejected by decision of the Baku Court of Appeal, dated 16 January 2014, and the 13 November 2013 judgment of the Baku serious crimes court was upheld. On 21 April 2015, the Supreme Court ruled that the decision of the Baku Court of Appeal should be upheld.

Available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20752&LangID=E.

[5] See CCPR/C/AZE/CO/4 para. 23.

[6] The Working Group presumes that this means that Mr. Ramazanov was charged by the said court.

30. On 20 February 2014, following his conviction, Mr. Ramazanov was transferred from the Baku pretrial detention facility to prison No. 2. On arrival, he was provided with the "necessary housing conditions". His rights and duties and the rules of execution of the sentence were explained to him.

31. According the Government, Mr. Ramazanov is recorded as a prisoner inclined to file false, slanderous complaints regarding prisoners and prison officers, to create confusion among fellow inmates, to obstruct the normal working activity of the prison, and to attack prison officers while serving his sentence.

32. He has not been exposed to torture, inhuman or degrading treatment during the serving of his sentence and his right to personal security is ensured as prescribed by law. He has used his rights to hold meetings and make telephone calls, without any restriction. While in detention in prison No. 2, he has met with his lawyers. In May 2016, during their country visit to Azerbaijan, members of the Working Group on Arbitrary Detention met with Mr. Ramazanov.

33. Mr. Ramazanov has undergone regular medical examination for tuberculosis. Check-ups have been conducted for prophylactic purposes, and no worsening of his condition has been observed. In February 2016, Mr. Ramazanov underwent detailed clinical and laboratory examinations in a treatment facility, for a minor neurological disorder, and outpatient treatment was prescribed. As a result of that treatment, he recovered. His health is currently considered satisfactory. He is "ensured with medical service, his physiological indicators are norm and no tuberculosis aggravation is observed".

34. Mr. Ramazanov's rights to submit an application to the court requesting that he be moved to another type of prison after serving two thirds of his sentence (on 9 May 2019), or to be released on parole after serving three quarters of his sentence (on 8 February 2020) have been explained to him.

35. Finally, the Government states that the claims listed in the Working Group's request: arbitrary arrest of Mr. Ramazanov; his detention by unknown persons without notification; the reason for his arrest being related to criticism of the Government; inhumane treatment and violence against him by the authorities; and negligence towards his complaints have been found to be unsubstantiated.

Further comments from the source

36. On 1 November 2017, the reply of the Government was sent to the source for comment. Comments were provided on 15 November 2017.

37. The source notes that with regard to the circumstances of the arrest, the Government has submitted that Mr Ramazanov was detained by police officers on 9 May 2013, that he was found to have a large amount of heroin (9.057 grams) on his person, and that he was found criminally liable on 10 May 2013. According to the source, the Government has failed to further clarify the circumstances of his arrest. The source refers to its original submission, which stated that Mr. Ramazanov was detained by plainclothes officers, who did not notify him of the reasons for his arrest, in violation of Azerbaijan's obligations under international human rights law. Mr. Ramazanov insists that the drugs were planted on him, and that law enforcement officers forced him to touch the drugs while in detention.

38. The source also notes that Mr. Ramazanov's claim is in line with the findings of Human Rights Watch, which has documented a well-established pattern of Azerbaijan's authorities using false, politically-motivated criminal charges to jail dissenters, including the planting of narcotics.[7] The source reiterates that in its opinion Mr. Ramazanov is in fact being detained for having peacefully exercised his right to freedom of expression, and has been convicted on false charges.

39. Furthermore, according to the source, the Government, in its response, does not address the fact that Mr. Ramazanov was subjected to enforced disappearance for a period

[7] See Human Rights Watch, Harassed, Imprisoned, Exiled. Azerbaijan's Continuing Crackdown on *Government Critics, Lawyers, and Civil Society* (20 October 2016).

of four days from the time of his arrest, or that he was unable to access legal counsel until 17 May 2013, eight days after his arrest, despite repeated requests by his counsel to him.

40. The Government states that during the court hearing, in addition to the police officers who had detained Mr. Ramazanov, two other individuals were interrogated as witnesses. The source notes that this statement contradicts the information received that only the arresting officers testified against Mr. Ramazanov at his trial. With regard to these two individuals, the source was informed that they had testified to the effect that they knew the police officers, and that they would trust the police officers to tell the truth. However, neither of the individuals testified to the allegations raised against Mr. Ramazanov. The source alleges that the use of political volunteers hired by the police to provide testimony along the described lines is common practice in Azerbaijan.

41. The Government also submits that the allegations of ill-treatment of Mr. Ramazanov while in police custody immediately after his arrest were thoroughly investigated and subsequently dismissed. In this respect, the source reiterates that Mr. Ramazanov's lawyer, who met with Mr. Ramazanov on 17 May 2013, saw injuries on his client's face, neck and hands.

42. With regard to the timing of the medical examinations, the source notes that an examination carried out at the end of June regarding allegations of ill-treatment that had taken place at the beginning of May would not necessarily reveal any injuries or traces thereof. With regard to the examination upon admission to the pretrial detention facility, the source notes that Mr. Ramazanov was only transferred to the pretrial facility on 20 May 2013 (in contravention of domestic law that provides for such transfer within 24 hours of the judicial remand order being issued) and that accordingly the same observation applies here. In addition, the source refers to the recommendation made to the Azerbaijani authorities by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, following its 2016 country visit, "to take resolute action to ensure that the return of remand prisoners to police facilities, for whatever purpose, is sought and authorised only when there is absolutely no other alternative, and for the shortest time possible".[8]

43. The source reiterates that Mr. Ramazanov's requests to see, in a timely manner, a doctor of his own choice, who could have documented the medical findings to prove the allegations of ill-treatment, were repeatedly ignored. In this regard, the source notes that the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that instructions be issued on the subject of the rights of persons in police custody to have access to a doctor, stipulating that a request by a detained person to see a doctor should always be granted and that a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police.[9]

44. The source observes that the investigation by the Azerbaijani authorities cannot be considered adequate. In this connection, the source refers to the jurisprudence of the European Court of Human Rights,[10] which with regard to the examination of claims of ill-treatment by the police, in particular in cases of incommunicado detention, has repeatedly concluded that the mere examination of medical reports, without hearing the individual or questioning the officers alleged to have committed the ill-treatment, falls short of the procedural requirements under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The examination of medical records alone does not constitute a proper examination of the evidence comprising all reasonable inquiries with a view to meeting the standard of an in-depth and effective investigation. In the case at hand, Mr. Ramazanov was not heard and no police officers were questioned in relation to the allegations of ill-treatment.

[8] Report to the Government of Azerbaijan on the visit to Azerbaijan from 20 to 30 November 2016.

[9] Ibid.

[10] See, inter alia, European Court of Human Rights, *Egiguren v. Spain* (application No. 47303/08), judgment of 16 October 2012, paras. 38–42.

45. Furthermore, the source notes that the Government's response regarding the allegations of ill-treatment does not address Mr. Ramazanov's period of incommunicado detention, which may be considered a form of ill-treatment (for himself and his family).

46. The source also notes that the Government submits that Mr. Ramazanov was "provided with the necessary housing conditions." In this respect, the source wishes to convey the information received that the cells are very crowded, insufficient cleaning materials are provided, and in winter the cells are always very cold. Mr. Ramazanov's complaints on these issues have reportedly not been heard.

47. In addition, Mr. Ramazanov spent 15 days in solitary detention in January 2017. According to information received by the source, he was put in isolation subsequent to prison guards discovering a notebook in which he was documenting the conditions of his detention. Upon discovery of the notebook, he was questioned, beaten and put in solitary confinement. Since then, Mr. Ramazanov no longer has access to writing materials, in contravention of the Nelson Mandela Rules.

48. Lastly, with regard to Mr. Ramazanov's access to adequate medical care, the Government submits that his "health is satisfactory, he is insured with medical service, his physiological indicators are norm and no tuberculosis aggravation is observed". The source notes that this submission contradicts information received that Mr. Ramazanov is not allowed to see the prison doctors when he wants to, and that as a consequence of this denial of access to adequate medical care, his tuberculosis is not being treated properly.

Discussion

49. The Working Group wishes to thank the source and the Government for their engagement and for their submissions in relation to the detention of Mr. Ramazanov.

50. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.[11]

51. The Working Group recalls that, where it is alleged that a person has not been afforded by a public authority certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.

52. Both parties have recognized that Mr. Ramazanov was arrested in Baku on 9 May 2013. The source has alleged, and the Government did not rebut, that the officers from the Organized Crime Department of the Ministry of Internal Affairs of Azerbaijan who participated in his arrest were wearing plain clothes and appeared without any arrest warrant or other decision by a public authority. During the arrest, Mr. Ramazanov was not informed of the reasons for his arrest.

53. The Working Group also notes that in the context of its country visit to Azerbaijan from 16 to 25 May 2016, it received repeated allegations of the lack of legal basis justifying the deprivation of liberty of individuals expressing opinions not in line with those of the Government.[12]

54. In the light of the foregoing, the Working Group considers that no legal basis was invoked during the arrest of Mr. Ramazanov to justify his deprivation of liberty, and that his detention is thus arbitrary, falling within category I.

55. The Working Group is aware that Mr. Ramazanov is a recognized writer and journalist in Azerbaijan, who was detained for several months in 2005 after criticizing a former ruler of Azerbaijan in a book called *One Hundred Muslims*, and is known for his anti-government posts online.

[11] See A/HRC/19/57, para. 68.
[12] See A/HRC/36/37/Add.1, para. 80.

56. The source has alleged, and the Government has not denied the allegations, that the authorities of Azerbaijan planted drugs on Mr. Ramazanov's person during his arrest and that the officers forced him to touch the drugs. The Working Group notes that this type of detention and fabrication of crimes against human rights defenders and journalists has been identified by international human rights bodies, including the Human Rights Committee and the Working Group, as a practice employed in Azerbaijan.

57. The Working Group notes that in 2016, the Human Rights Committee, having reviewed the fourth periodic report of Azerbaijan (CCPR/C/AZE/4), expressed its concern regarding consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.[13]

58. During its country visit to Azerbaijan in 2016, the Working Group collated information from numerous sources and concluded that human rights defenders, journalists, political opponents and religious leaders who criticized the Government and its policies faced limitations to their work and personal freedom.[14] The Working Group also recalls its previous opinions on Azerbaijan where it found detentions of members of a minority religious community as well as of a journalist and a human rights defender to be arbitrary, falling within categories II, III and V.[15]

59. In view of the above, the Working Group concludes that Mr. Ramazanov's deprivation of liberty results from his exercise of the right to freedom of expression as guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. It is thus arbitrary, falling within category II.

60. Given its finding that the deprivation of liberty of Mr. Ramazanov is arbitrary under category II, the Working Group wishes to emphasize that no trial should have taken place. A trial did, however, take place and the source has submitted that the detention of Mr. Ramazanov is also arbitrary under category III.

61. The Working Group notes that both parties to this procedure have recognized that Mr. Ramazanov was accused of drug crimes and sentenced to nine years in prison. In this regard, the source has alleged that several of Mr. Ramazanov's due process rights were violated. According to the source, he was kept in police custody for 10 days until 20 May 2013, in breach of the Code of Criminal Procedure of Azerbaijan whereby a person arrested on the grounds of a court decision may not be held in a temporary detention facility for longer than 24 hours, before expiry of which he is to be transferred to the investigating authority's remand facility (this period is not to include the time spent transporting the arrested person to the remand facility). The Working Group notes that the Government has not denied this allegation.

62. Furthermore, Mr. Ramazanov's family and lawyer had no information about his whereabouts for four days, and his lawyer was only allowed to meet him in police custody on 17 May 2013, despite repeated requests. In 2010, the Working Group and several special procedure mandate holders completed a joint study on global practices in relation to secret detention in the context of counter-terrorism. The experts reiterated that international law prohibited secret detention, which violated several human rights standards, including the right to fair trial.[16] The experts found that certain practices inherent in secret detention, such as the use of secrecy and insecurity caused by the denial of contact with the outside world, placed detainees in a situation of heightened vulnerability to violations of the right to fair trial, including forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, and torture

[13] See CCPR/C/AZE/CO/4, para. 36 (a).
[14] See A/HRC/36/37/Add.1, para. 80.
[15] See opinions No. 42/2015; No. 59/2013; and No. 22/2011.
[16] See A/HRC/13/42, paras. 27 and 282.

and ill-treatment.[17] Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention and urged States to ensure that all persons held in detention under their authority were provided with access to the courts and to investigate all alleged cases of secret detention, including under the pretext of counter-terrorism.

63. The Working Group considers that the extensive police custody of Mr. Ramazanov in violation of domestic legislation, his secret detention for a period of several days by the Azerbaijani authorities and the denial of his right to access to his defence lawyer imply that the Government breached its international obligations in relation to the fair trial and due process guarantees recognized by articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights. The Working Group concludes that these violations of the right to a fair trial are of such gravity as to give the deprivation of liberty of Mr. Ramazanov an arbitrary character according to category III.

64. Furthermore, the Working Group expresses its concerns at the allegations of torture and other cruel and inhuman treatment or punishment put forward by the source, which would appear to reveal a prima facie breach of the absolute prohibition of torture and ill-treatment. The absolute prohibition of torture and ill-treatment is a peremptory norm of international law, as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 1 of the Nelson Mandela Rules. The Working Group will thus refer this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

Disposition

65. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Rashad Ramazanov, being in contravention of articles 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

66. The Working Group requests the Government of Azerbaijan to take the steps necessary to remedy the situation of Mr. Ramazanov without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

67. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ramazanov immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

68. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ramazanov and to take appropriate measures against those responsible for the violation of his rights.

69. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

Follow-up procedure

70. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

[17] See also opinion No. 14/2009, para. 21 and opinion No. 5/2001, para. 10 (iii), in which the Working Group found that secret detention was per se a violation of the right to a fair trial under category III.

(a) Whether Mr. Ramazanov has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Ramazanov;

(c) Whether an investigation has been conducted into the violation of Mr. Ramazanov's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

71. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

72. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

73. The Government should disseminate through all available means the present opinion among all stakeholders.

74. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[18]

[*Adopted on 19 April 2018*]

[18] See Human Rights Council resolution 33/30, paras. 3 and 7.